

# In the Supreme Court of the State of Idaho

---

IN RE: AMENDMENT OF )  
MISDEMEANOR CRIMINAL RULES ) ORDER  
5, 6, and 13(b) )  
\_\_\_\_\_ )

The Court having reviewed proposed amendments by the Misdemeanor / Infraction Rules Advisory Committee to the Misdemeanor Criminal Rules, and the Court having fully considered the same;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Misdemeanor Criminal Rules as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That Misdemeanor Criminal Rule 5 be, and the same is hereby, amended to read as follows:

**Rule 5. Uniform citation – Issuance – Service – Form – Number -- Distribution.**

\*\*\*

**(b) Exception – Second Offense or Enhanced DUI.** Notwithstanding subsection (a), a defendant arrested or cited and subsequently released for “Driving Under the Influence (Second Offense),” Idaho Code § 18-8005(4), or “Driving Under the Influence (Enhanced Penalty),” Idaho Code § 18-8004C, shall personally appear before a magistrate, for arraignment, within forty-eight (48) hours following the arrest or citation excluding Saturdays, Sundays, and holidays. Provided, the court may postpone the arraignment if the defendant is hospitalized or otherwise in a condition which prevents the defendant being taken before the magistrate. At the arraignment, the court may order any appropriate conditions of release, pursuant to Idaho Criminal Rule 46. Failure to conduct the arraignment within forty-eight (48) hours shall not constitute grounds for dismissal. A person arrested or cited who remains in custody shall make an initial appearance before a magistrate as provided in Idaho Criminal Rule 5.

**(bc) Citizen Citation.** The uniform citation may be signed by any person in whose presence an alleged offense occurred and be witnessed by a peace officer whose name shall be endorsed on the citation.

**(ed) Service of a Citation.** Service of a citation may be made by the defendant signing a written promise to appear on the citation at the time indicated, but if the defendant fails or refuses to sign the written promise to appear, or an electronic

citation is issued, a peace officer may serve the citation on the defendant by personal delivery to the defendant and indicate such service on the face of the citation.

(de) **Citation After Arrest.** The peace officer may arrest a defendant when permitted by law and thereafter sign the complaint in a uniform citation which shall constitute the complaint for prosecution of the criminal action.

(ef) **Warrant of Arrest.** The peace officer may sign the complaint in a uniform citation and present it to a magistrate for the issuance of a warrant of arrest upon the showing of probable cause as provided in Rules 4 and 5 of the Idaho Criminal Rules. In determining probable cause of the issuance of a warrant, the magistrate shall give preference to the issuance of a summons, which can be the summons in the citation.

(fg) **Form.** With the exception of electronically....

\*\*\*

2. That Misdemeanor Criminal Rule 6 be, and the same is hereby, amended to read as follows:

**Rule 6. First appearance of defendant – Plea of a defendant – Trial date notice or continuance notice.**

(a) **First Appearance and Plea Before Clerk of the Court.** Except as provided in Rule 5(b), the defendant shall first appear before the clerk on or before the appearance date to enter a plea to a misdemeanor citation or complaint.

\*\*\*

(d) **Appearance by Defendant Through Attorney.** Except as provided in Rule 5(b), Aa defendant may also appear, answer and have judgment entered through an attorney, who shall either appear in person or shall file, at or before the time for appearance, a written appearance and answer on behalf of the defendant. The court may, in its discretion, require the presence of the defendant at any stage of the proceeding not otherwise required by these rules.

\*\*\*

3. That Misdemeanor Criminal Rule 13(b) be, and the same is hereby, amended to read as follows:

**Rule 13. Bail schedules.**

\*\*\*

(b) **Bail bond schedule.** Except as provided above, the bail bond required for specific alleged offenses pending arraignment or trial shall be as follows:

Idaho Code	Offense	Bail Bond
(1)	MOTOR VEHICLE OFFENSES:	

\*\*\*

18-8004

Driving Under the Influence  
(Second Offense)

Resident (with condition  
Defendant must appear in court for  
arraignment within 48 hours,  
excluding weekends and holidays) 1,000.00

Nonresident (with condition  
Defendant must appear in court for  
arraignment within 48 hours,  
excluding weekends and holidays) 3,000.00

18-8004C

Driving Under the Influence  
(Enhanced Penalty)

Resident (with condition  
Defendant must appear in court for  
arraignment within 48 hours,  
excluding weekends and holidays) 1,000.00

Nonresident (with condition  
Defendant must appear in court for  
arraignment within 48 hours,  
excluding weekends and holidays) 3,000.00

\*\*\*

IT IS FURTHER ORDERED, that this order and these amendments shall be effective the 1<sup>st</sup> day of July, 2011.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Misdemeanor Criminal Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 18 day of March, 2011.

By Order of the Supreme Court



Daniel T. Eismann,  
Chief Justice

ATTEST: Stephen Kenyon  
Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.  
WITNESS my hand and the Seal of this Court 3-21-11

3

STEPHEN W. KENYON  
Clerk

By: Kimberly Grane Deputy